
In the Matter of the Compensation of
ADRIAN JARA, Claimant
Own Motion No. 23-00006OM
OWN MOTION ORDER REVIEWING CARRIER CLOSURE
Welch Bruun & Green, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Ceja and Curey.

Claimant requests review of a March 3, 2023, Own Motion Notice of Closure that: (1) determined that his right eye condition was medically stationary on January 12, 2023; and (2) did not award permanent disability benefits for his “worsened condition” (right eye traumatic retinal dialysis with limited retinal detachment). Asserting that there has not been a proper closing examination, claimant argues that his claim was prematurely closed. Alternatively, he seeks additional permanent disability benefits (impairment and work disability). Based on the following reasoning, we affirm the Own Motion Notice of Closure.¹

FINDINGS OF FACT

On July 4, 2013, claimant sustained a compensable right eye injury. (Exs. 1, 7).

On July 25, 2013, SAIF accepted right eye traumatic retinal dialysis with limited retinal detachment, right eye traumatic iritis, and right eye vitreous hemorrhage. (Ex. 7).

On April 28, 2014, a Notice of Closure awarded 3 percent whole person permanent impairment for claimant’s right eye. (Ex. 17).

On June 16, 2022, claimant underwent scleral buckle and cryopexy surgical procedures for the right eye. (Ex. 26).

¹ Claimant’s July 4, 2013, claim was accepted as a disabling claim and first closed on April 28, 2014. (Exs. 7, 17). Thus, his aggravation rights expired on April 28, 2019. Therefore, when claimant sought claim reopening in June 2022, the claim was within our Own Motion jurisdiction. ORS 656.278(1). On February 13, 2023, SAIF voluntarily reopened claimant’s Own Motion claim for a “worsened condition” (right eye traumatic retinal dialysis with limited retinal detachment). On March 3, 2023, SAIF issued its Own Motion Notice of Closure.

On September 28, 2022, claimant underwent pars plana vitrectomy, endolaser photocoagulation, and air-fluid exchange procedures for the right eye. (Ex. 30).

On October 19, 2022, claimant underwent additional pars plana vitrectomy, endolaser photocoagulation, and air-fluid exchange procedures for the right eye. (Ex. 33).

On November 30, 2022, claimant underwent pars plana vitrectomy, silicone oil removal, phacoemulsification, and intraocular lens placement procedures for the right eye. (Ex. 39).

On February 13, 2023, SAIF voluntarily reopened claimant's Own Motion claim for a worsening of his previously accepted condition (right eye traumatic retinal dialysis with limited retinal detachment). (Ex. 45).

A March 3, 2023, Own Motion Notice of Closure regarding the "worsened condition" claim did not award additional permanent disability benefits. (Ex. 49).

On March 13, 2023, claimant requested review of the Own Motion Notice of Closure, seeking a reopening of the claim or, alternatively, additional permanent impairment and work disability benefits. (Ex. 50).

CONCLUSIONS OF LAW AND OPINION

When a claim has been reopened pursuant to our Own Motion authority for a "worsened condition" under ORS 656.278(1)(a), the subsequent closure of that claim pertains only to the reopened "worsened condition" claim. *Dennis D. Kessel*, 55 Van Natta 3651 (2003); *Clayton L. Sutherland*, 55 Van Natta 2694 (2003); *Ginney E. Etherton*, 55 Van Natta 2216 (2003).

Here, the claim was reopened for a "worsened condition" (right eye traumatic retinal dialysis with limited retinal detachment) that was in Own Motion status. *See* ORS 656.278(1)(a). Accordingly, the March 3, 2023, Own Motion Notice of Closure pertained only to the claim for a "worsened condition." *See Etherton*, 55 Van Natta at 2217; *Arvin D. Lal*, 55 Van Natta 816 (2003). A closure is premature if the accepted and reopened condition is not medically stationary on the date of claim closure. *Jerry A. Akins*, 61 Van Natta 1341, 1347 (2009); *Muriel E. Dexter*, 55 Van Natta 4185, 4189 (2003). Therefore, the premature closure issue regarding the previously accepted "worsened condition" depends on whether that condition was medically stationary as of March 3, 2023.

“Medically stationary” means that no further material improvement would reasonably be expected from medical treatment or the passage of time. ORS 656.005(17). The term “medically stationary” does not mean that there is no longer a need for continuing medical care. *Maarefi v. SAIF*, 69 Or App 527, 531 (1984); *Pennie Rickerd-Puckett*, 61 Van Natta 336 (2009). The issue of claimant’s medically stationary status is primarily a medical question to be decided based on competent medical evidence, not limited to the opinion of the attending physician. *Harmon v. SAIF*, 54 Or App 121, 125 (1981); *Michael J. Oliver*, 63 Van Natta 728, 730 (2011).

Here, claimant’s attending physician, Dr. Flaxel, opined that the “worsened” right eye condition was medically stationary and released claimant to regular work as of his January 12, 2023, evaluation. (Ex. 47). Dr. Flaxel’s “medically stationary” opinion is unchallenged. Thus, after conducting our review, this record unequivocally establishes that, by January 12, 2023, no further medical improvement in claimant’s “worsened condition” would be reasonably expected from medical treatment or the passage of time and that the previously accepted retinal detachment condition for which the claim was reopened was medically stationary as of claim closure. Therefore, the “worsened condition” claim was not prematurely closed. *See Cheryl A. Wilson*, 73 Van Natta 963, 965 n 3 (2021) (under ORS 656.278(1) and OAR 438-012-0055(1), an Own Motion claim is closed when the claimant’s “condition has become medically stationary”); *Jack M. Cooper*, 68 Van Natta 1446, 1451 (2016) (the closure of a “worsened condition” claim pertains only to the “worsened condition”).

Claimant further contends that he is entitled to additional permanent disability benefits (impairment and work disability). However, because claimant’s Own Motion claim was reopened for a “worsened condition” under ORS 656.278(1)(a), claimant is not statutorily entitled to additional permanent disability benefits pursuant to ORS 656.278(2)(d).² *See Goddard v. Liberty Northwest Ins. Corp.*, 193 Or App 238 (2004); *Paul E. Christeson*, 75 Van Natta 401, 403 (2023); *Jose C. Moreno*, 63 Van Natta 2242, 2243 (2011); *Jimmy O. Dougan*, 54 Van Natta 1213, *recons*, 54 Van Natta 1552 (2002), *aff’d Dougan v. SAIF*, 193 Or App 767 (2004), *vacated*, 339 Or 1 (2005).

² We further note that Dr. Flaxel released claimant to regular work. (Ex. 47); *see Cyril J. Allen*, 68 Van Natta 1367, 1373 (2016) (the claimant was not entitled to a work disability award in the absence of work restrictions).

Accordingly, based on the aforementioned reasoning, we affirm the March 3, 2023, Own Motion Notice of Closure.³

IT IS SO ORDERED.

Entered at Salem, Oregon on August 30, 2023

³ In reaching this conclusion, we acknowledge that an Own Motion Notice of Closure may be invalid when, prior to closure of a “post-aggravation rights” new/omitted medical condition claim, the carrier does not obtain the attending physician’s findings of permanent impairment or the attending physician’s ratification of such impairment findings from another provider. ORS 656.278(1)(b), (6); OAR 436-035-0001 *et seq.*; OAR 438-012-0055; *see Charles D. Leffler*, 67 Van Natta 1997, 2004 (2015). Nevertheless, this claim concerns a “worsened condition,” for which claimant is not entitled to additional permanent disability benefits. *See Christeson*, 75 Van Natta at 403; *Moreno*, 63 Van Natta at 2243. In any event, under these particular circumstances, Dr. Flaxel performed a closing examination and provided findings. (Ex. 43).